



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AN/F77/2020/0001**

**HMCTS code  
(paper, video,  
audio)** : **P: Paper Remote**

**Property** : **7 Wellesley Mansions, London W14  
9AH.**

**Applicant** : **Bradford Property Trust Limited.**

**Representative** : **Grainger PLC**

**Respondent** : **Ms. S. MacQuire.**

**Representative** : **In person.**

**Type of application** : **Application for the determination of a  
Rent under the Rent Act 1977.**

**Tribunal members** : **Ms. A. Hamilton-Farey**

**Venue** : **Remote.**

**Date of Reasons** : **4 January 2021.**

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**DECISION**

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**Decision**

**£20,577.00 per annum is to be registered as the fair rent for the above property with effect from 12 November 2020 being the date of the Tribunal's decision.**

The reasons for this decision are set out below.

## **Reasons**

### **Background**

On 18 October 2019, the landlords Bradford Property Trust Ltd applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £1,946.00 per month for the property. The rent payable at the time of the application was £18,480.00 per annum, inclusive of a £741.38 service charge, effective from 21 November 2017, following a previous tribunal referral.

On 4 December 2019, the Rent Officer registered a fair rent of £18,250.00, effective from the same date. The Rent Officer made no comments as to the uncapped rent, but it appears from the rent register that the rent had been capped in line with the Maximum Fair Rent Order (“MFR”).

By letter dated 19 December 2019, the landlord objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

### **The law**

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property.

Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house in the locality on the terms ( other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling houses in the locality which are available for letting on such terms. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [1999] QB 92* the Court of Appeal emphasised

- (a) that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms - other than as to rent - to that of the regulated tenancy) and
- (b) that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the cap applies the Rent Officer and

the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply *“in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*

### **Determination:**

In view of the current pandemic, the Tribunal was unable to inspect the property, and instead relied on submissions by the parties and its own expert knowledge. In this instance, the tenant made representations as to the level of the increase but did not provide any comparable evidence of similar properties in the locality. The tenant did provide a written submission in which she said that the property remained in poor condition, with poor insulation and windows, and that the installation of a new boiler in 2019 had been due to the fact the existing boiler was beyond repair.

The landlord produced a statement of comparable properties on which it wished to rely, including:

Kensington Hall Gardens (4 rooms, bath/w.c. and kitchen; - £2,400 pcm

Avonmore Road, W14 – 4 rooms, 2 x baths, modern kitchen; - £2,816 pcm

Barons Keep - 4 rooms, bath, w.c. - £2,496 pcm.

The landlord suggested that these comparables, supported the asking rent for the property.

The tenant commented on the landlord’s comparables, and although accepting that the location was similar, said that the comparables appeared to have been modernized, and were not situated above shops (including a restaurant) in a busy parade, which was frequently grid-locked with traffic with the consequent noise and fumes. The tenant also confirmed that the subject property had not been decorated for some years and reiterated the poor condition of her flat. The tenant also referred to reports of falling rentals in London, partly due to the pandemic and partly due to an oversupply.

The property is a first floor 5 roomed flat, with 2 bathrooms/w.c and full gas central heating. The property is located in a very popular but busy area of London, close to all the usual amenities and transport links

### **Terms of the tenancy**

It is understood that this tenancy began on 1 January 1975. It is agreed that the landlord is responsible for structural repairs and external decoration; it is understood that the landlord is also liable for internal redecoration. The property was originally let in a furnished condition, but that furniture would now be passed its useful life and in this tribunal's, opinion has no residual value.

### **Landlord's improvements**

The landlord has not suggested that any improvements have been carried out to the property during the tenancy, or since the last registration, and the tribunal considers that a replacement boiler is an improvement that would create an exemption to the Maximum Fair Rent Order. Accordingly, the tribunal has not taken the boiler replacement into consideration.

### **Evidence**

The Tribunal had copies of the Valuation Office Agency correspondence including the previous rent register.

The landlord's comparables have been referred to above.

Rightmove details were appended to the landlord's submissions, and these showed that the comparables were in a good condition, some were furnished, and had modern fixtured and fittings. None appeared to be over shops.

### **Valuation**

In the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the **open market** if it were let today in the condition that is considered usual for such an open market letting.

We consider that the subject property, if finished to the standard required in this location, would be likely to attract a rent under an assured shorthold tenancy of £33,800 per annum. This is the hypothetical market rent for the property.

However, we must **adjust that hypothetical rent** to allow for the differences between the terms of this tenancy, the situation of the flat above shops and the lack of modernization.

Using our own expertise, we considered that a deduction of 10% should applied in order to take into account the terms of the tenancy and the lack of modernization, making a deduction of £3,3800.00 per annum. Giving an adjusted market rent of £30,430.00 per annum.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

### **Scarcity**

Thirdly, the tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality. Greater London is considered to be an appropriate area to use as a yardstick for measuring scarcity and it is clear that there is a substantial measure of scarcity in Greater London.

We therefore made a further deduction of approximately 20% from the adjusted market rent to reflect this element to produce a figure of £24,336.00 per annum.

### **Conclusion**

The capping provisions of the Rent Acts (Maximum Fair Rent) Order apply and therefore the above figure does not apply. The capped fair rent in accordance with the calculations provided on the decision template is **£20,577.00 per annum**.

Therefore, the fair rent to be registered is limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 12 November 2020 being the date of the Committee's decision.

Tribunal: Ms A. Hamilton-Farey

Date: 4 January 2021.